*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

<+ WRIT PETITION NO. 3018 OF 1999

% 28-10-2004

M.Rajesham

...Petitioner.

Versus

$ 1. A.P.Transco Rep.BY its Chairman-Managing Director

Vidyut Soudha Somajiguda, Hyderabad.

2. The Chief Engineer, Electricity A.P. Transco,

Nizamabad Zone Nizamabad.

3. The Superintendent Engineer (Operation Circle)

A.P.Transco, Adilabad.

4. The Divisional Engineer Electrical (O&C), A.P.

Transco, Mancherial, Adilabad District.

5. The Asst.Accounts Officer,Electrical Revenue Officer,

A.P.Transco, Mancherial, Adilabad District.

...Respondents.

! Counsel for the Petitioner: Mr. D.Linga Rao

^ Counsel for the Respondents: Mr S.Ravindranath (SC for AP Transco

< Gist:

> Head Note:

? Cases referred:

1. **1996(8) Services Law Reporter – 402**
2. **2002-III LLJ-944**
3. **AIR 1996 SUPREME COURT 484**
4. **(2003) 8 SUPREME COURT CASES 9**
5. **(2004) 4 SUPREME COURT CASES 560**
6. **2004(7) SUPREME TODAY 94**
7. **AIR 1995 SUPREME COURT 1161**

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY THE TWENTY EIGHT DAY OF OCTOBER,

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 3018 of 1999

Between:

M.Rajesham S/o.Bhumaiah
R/o.H.No.1-5-402,Laxminagar Karimnagar

..... PETITIONER

AND

1. A.P.Transco rep.by its Chairman-Managing Director
   Vidyut Soudha Somajiguda, Hyderabad.
2. The Chief Engineer, Electricity A.P.Transco
   Nizamabad Zone Nizamabad.
3. The Superintendent Engineer (Operation Circle) A.P.Transco
   Adilabad
4. The Divisional Engineer Electrical (O & C), A.P.Transco
   Mancherial,Adilabad Dist.
5. The Asst.Accounts Officer,Electrical Revenue Offcier A.P.Transco
   Mancherial Adilabad Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to the impugned orders of Respondent No.2 dt.29-10-1998, rejecting the appeal
dt.27-4-1998 of the petitioner and order dt.26-3-1998 passed by the third respondent i.e., the Superintending Engineer punishment of compulsory retirement to the petitioner and setting them aside as being illegal, improper, violative of principles of natural justice and un-constitutional, hence void and bad in law and consequently directing the respondents to reinstate the petitioner into service of the A.P.Tansco with all consequential benefits.

Counsel for the Petitioner: MR.D.LINGA RAO

Counsel for the Respondents: MR.S.RAVINDRANATH (SC for A.P. Transco)

The Court made the following:

O R D E R :

The petitioner questions the order, dated 26.3.1998 passed by the third respondent-Superintending Engineer (Operation Circle) A.P. TRANSCO, Adilabad in awarding punishment of “Compulsory retirement”, as confirmed by the second respondent-Appellate Authority/Chief Engineer, A.P. TRANSCO, Nizamabad Zone, Nizamabad by his order dated 29.10.1998.

2. The petitioner joined in the service of Andhra Pradesh State Electricity Board on

18.12.1970 as Bill Collector and he was promoted as L.D.C. in the year 1982 and he worked as L.D.C. in Karimnagar, Warangal, Jagitial, Huzurabad and Mancherial. The petitioner has put in total service of 27 years 4 months. It is stated that he maintained good record of service throughout his career and he was never issued even a warning at any time during his entire service.

3. While so, on certain complaints made against the petitioner, the matter was entrusted to the Anti Corruption Bureau Authorities for necessary enquiry with regard to disproportionate assets alleged to have been acquired by him. The Director General, A.C.B. conducted an enquiry and forwarded a report vide its letter No.84/RE-KNR/94-S15, dated 19.8.1995 stating that there is no evidence to prove the allegations of disproportionate assets through the unknown sources of income of the petitioner and in pursuant to the said report, the Vigilance Commissioner addressed a letter No.596/VC/G2/95-6, dated 29.6.1996 to the Secretary, Government Energy Department advising to deal with the matter only departmentally, if the petitioner has violated Rule 5 of A.P.S.E.B. (Revised) Conduct Regulations issued vide G.O.Ms.No.697 dated 10.7.1978, as he has acquired and sold the properties contrary to the said regulation without obtaining prior permission/approval from the competent authority. Pursuant to the said letter, the second respondent, vide memo dated 23.9.1996, appointed an Enquiry Officer to enquire into the above lapses said to have been committed by the petitioner. Pursuant to the same, the Enquiry Officer framed three charges, vide memo dated 17.12.1996, and thereafter, a supplementary charge sheet was also issued vide memo dated 07.02.1997 framing one more additional charge for pilferage of the energy in the premises of the petitioner.

4. The sum and substance of the four charges framed against the petitioner are as follows:

i. *It is alleged that Sri M.Rajesham, LDC, acquired number of plots, in his own name and in the names of his family members, without intimation through proper channel to the Board and without prior permission/approval from the competent authority.*

ii. *It is alleged that Sri M.Rajesham, LDC, Sold out some of the plots without intimation through proper channel to Board and without prior permission/approval from the competent authority.*

iii. *It is alleged that Sri M.Rajesham, LDC, constructed house and shed in his name and his family members without intimation through proper channel to Board and without proper permission/approval from competent authority.*

iv. *Supplementary charges: It is alleged that during the course of vigilance enquiry it was revealed that Sri M. Rajesham, LDC, the (5) services which are in his name were detected theft of energy in all (5) services. The Asst. Divisional Engineer/DPE has issued separate initial assessment notices to that effect and were also served to the above consumer who had also paid 50% of the assessed amount. Theft of energy on the part of consumer who is a Board employee amount to gross misconduct.*

The charges 1 to 3 relate to enquiry of certain properties acquired either in the name of the petitioner or in the name of his family members and also selling the same without intimation through the proper channel to the Board and without prior permission from the competent authority.

5. It is the specific case of the petitioner that all the items of the properties either purchased or sold are less than Rs.10,000/- value and as per the Regulation 5 of the Andhra Pradesh State Electricity Board Employees (Revised) Conduct Regulations (for short 'the Revised Conduct Regulations') there was no need or obligation to inform the Board either before purchase or sale. Regulation 5 of the Revised Conduct Regulations has registered and framed vide B.P.Ms.No.697, (Management Service) dated 10.7.1978 in supersession of the earlier Regulations made in B.P.Ms.No.534, dated 16.8.1967.

6. Regulation 5 of the Revised Conduct Regulations reads as follows:

> *"5. **POSSESSION OF PROPERTIES:** An employee shall not acquire, alienate, or otherwise deal with movable/immovable property of a value exceeding Rs.10,000/- by sway of purchase, sale, gift, lease, mortgage, pledge, change, exchange etc. in his own name or in the*

name of any member of his family without prior information to the Board or the competent authority as the case may be. In the case of a joint family a junior member shall not be required to obtain sanction if such property is acquired by the managing member on behalf of the family unless it is shown that it is really intended to be self acquired property of the employee. For the purpose of this regulation, the expression 'Movable Property' includes, jewellery, shares, security, debentures, loans advanced by an employee whether secured or not, motor cars, motor cycles or any other means of conveyance etc. Every employee shall on his first appointment and annually thereafter submit a return as in Annexure to these regulations in respect of the movable and immovable properties acquired or disposed off by him. Failure to furnish the correct information or furnishing incorrect or misleading information shall be deemed to be misconduct."

7 The Regulation 5 of the Revised Conduct Regulations was amended by proceedings in B.P.(P & G.Per) Ms.No.98, dated 11.8.1995 substituting the words "Twenty thousand" in the place of figure Rs10,000/-. Thus, the Regulation 5 of the Revised Conduct Regulations requires the prior permission or intimation in respect of the property acquired, the value of which exceeds Rs.10,000/- up to 10.8.1995, and from 11.8.1995 the employee shall obtain prior permission or intimate if he acquires the immovable property, the value of which exceeds Rs.20,000/-.

8. It is the case of the petitioner that the charge memo was issued for violation of Regulation 5 only on 17.12.1996 and the properties purchased or sold by the petitioner are less than Rs.20,000/- only and therefore, the prior permission was not required as per said Regulation 5 as amended by proceedings in B.P.(P & G.Per) Ms.No.98, dated 11.8.1995. Even prior to the said amendment, there was no need to obtain prior permission for acquiring the properties, the value of which does not exceed Rs.10,000/-. It is stated that the value of three transactions covered by charges 1 to 3 in Annexure-I is less than Rs.10,000/- and therefore, the failure to give information to the authorities in respect of the said transactions does not constitute violation of Regulation 5 of the Revised Conduct Regulations as it stood prior to the amendment or even as per the amended regulation. Insofar as Annexure-II of charge memo with regard to the sale of plots is concerned, it is stated that the transactions relate to the joint family property and the share of each member of the joint family is less than Rs.10,000/- and as such there is no violation of Regulation 5 of the Revised Conduct Regulations. Regulation 5 of the Revised Conduct

Regulations does not stipulate any intimation or prior permission for the construction of property in the own land.

9. As regards the 4th charge i.e. theft of energy in respect of five service connections, it is stated by the petitioner in his explanation dated 16.2.1997 that the alleged allegation of the theft of energy relates to the year 1992 and the inspection was made on 19.9.1992 and after 4 ½ years, the said allegation has been made as if the petitioner has committed theft of energy. It is stated that at the time of inspection on 19.9.1992, all the premises was occupied by the tenants and the alleged pilferage was only attributed to the occupants of the premises and just because the meters were in the name of the petitioner, the petitioner cannot be implicated in the matter without any justification. The provisional estimated value of the energy pilferaged by the then occupants was collected from them only which was remitted to the Board. Admittedly, no enquiry has been initiated against the said pilferage for a period of 4 ½ years and no notice was given to the petitioner with regard to the said pilferage. The petitioner was not at all in occupation of any of the premises during the year 1992 and he was living far away from the said premises. The Enquiry Officer, disbelieving the version of the petitioner, held that it is not the matter who stayed in the premises but all the five services are in the name of petitioner and his family members and the theft of energy had taken place and therefore, the said charge is held to be proved. The petitioner has specifically submitted all these defences and the facts to each and every charge in his explanation dated 26.12.1996 and also thereafter vide his explanation-dated 22.7.1997. But, the disciplinary authority has not considered the same and confirmed the punishment as proposed in the show cause notice after obtaining the concurrence of the committee constituted by Andhra Pradesh Electricity Board. Admittedly, the concurrence as obtained by the committee constituted by the Andhra Pradesh Electricity Board and the so called recommendations to award the said punishment of compulsory retirement were not at all intimated to the petitioner and the same were not furnished. The third respondent decided to confirm the proposed punishment and awarded the punishment of compulsory retirement on the petitioner.

10. Aggrieved by the said order of the disciplinary authority, dated 26.3.1998, the petitioner filed an appeal before the Appellate Authority-the second respondent on 2.5.1998. As the appeal was not disposed of, the petitioner filed W.P.No.24340 of 1998 to direct the Appellate Authority to hear and dispose of the appeal by taking into consideration the earlier record and service of the petitioner while dealing with all the contentions raised in the grounds of appeal. The said Writ Petition was disposed of by this Court by an order dated 31.8.1998 directing the second respondent to hear and dispose of the appeal of the petitioner within a period of two months from the date of receipt of a copy of the said order. The Appellate Authority, by its order dated 29.10.1998, dismissed the appeal without dealing with any of the contentions and the grounds raised in the appeal observing that the appellant does not deserve any merits of consideration in any manner since no fresh points worth considering were shown in support of him to reconsider his case. It is further stated that the order of punishment of compulsory retirement awarded on the petitioner by the third respondent is in order and accordingly rejected the appeal.

11. Admittedly, the appeal was filed within the prescribed time and the contentions raised in the appeal and the points put forth in the appeal were also recorded, but none of the contentions have been dealt with by the Appellate Authority.

12. Under Regulation 15(1) of Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations (for short 'the Discipline and Appeal Regulations"), the appellate authority shall consider:

a. *Whether the facts on which the order was based have been established;*

b. *Whether the facts established afford sufficient ground for taking action; and*

c. *Whether the penalty is excessive, adequate or inadequate; and after such consideration shall pass such order as it thinks proper;*

13. Admittedly, the Appellate Authority has not considered the relevant facts as to whether the order of the disciplinary authority is based upon the relevant factors and the appellate authority has also not considered as to whether the alleged charges

said to have been proved against the petitioner are sufficient grounds for taking action and whether the penalty of compulsory retirement imposed by the disciplinary authority is excessive, adequate or inadequate, was not at all considered by the Appellate Authority while passing the order.

14. A counter has been filed by the respondents stating that the Appellate Authority has considered and disposed of the appeal pursuant to the directions of this Court in W.P.No.24340 of 1998 dated 31.8.1998 duly following the provisions contained in regulation of conduct rules and the disciplinary authority/appointing authority and has passed the order after giving reasonable opportunity to the petitioner duly following all standards of disciplinary action and accordingly punishment of compulsory retirement for the charges held proved against him. It is stated that the said orders of the disciplinary authority as confirmed by the Appellate Authority are legal and valid and the same were passed after taking into consideration the gravity of the charges held proved against the petitioner.

15. It is the contention of the learned counsel for the petitioner that the petitioner is due to retire on 31.7.1999, but he was made to retire 16 months prior to his retirement. It is stated that the petitioner worked for 28 years with un-blemished record of service and imposition of punishment of compulsory retirement on the petitioner is highly excessive even assuming that the alleged charges were proved.

16. I have heard the arguments of both parties and also perused the relevant records.

17. Neither the Disciplinary Authority nor the Appellate Authority has considered the specific contention of the petitioner insofar as the charges 1 to 3 are concerned that the said purchase and sale of the property and making certain developments in his own property do not violate any of the provisions of Regulation 5 of the Revised Conduct Regulations. Infaras the charge No.4 is concerned, the disciplinary authority itself stated that it is no matter who stayed in the premises. Thus, there is

no finding at all that the petitioner was in occupation of any of the premises where the five service meters were installed. In the absence of any specific finding with regard to the occupation in one of the premises by the petitioner where the pilferage of electricity took place, it cannot be said that the pilferage of energy was not because of the act of the occupants/tenants but because of the petitioner. It is the specific case of the petitioner that the occupants were only responsible for the pilferage of energy but not the petitioner. But, the Appellate Authority has given no specific finding in this regard.

18. In support of his contention, the learned Counsel for the petitioner placed reliance on the judgment of this Court in S. PUSHPA RAJ v. DEPOT MANAGER, APSRTC, NIZAMABAD AND OTHERS wherein it was held that:

> *"Both Disciplinary and Appellate Authority have casually adverted to the explanations without recording specific finding on the defence put-forth by the petitioner except stating generally that the petitioner has not offered any satisfactory reply. Fair play in action, requires that the disciplinary authority shall consider the defence of the delinquent with open mind and judiciously."*

19. In the instant case, no specific finding as regards the pilferage of energy by the petitioner alone was not at all recorded and therefore, it cannot be said that the petitioner has committed theft of energy. I am of the opinion that it cannot be said that the charge No.4 was proved against the petitioner. Insofar as the charges 1 to 3 are concerned, both the authorities i.e. disciplinary as well as the appellate authority have not recorded any specific finding with regard to the contention as regards the compliance of Regulation 5 of the Revised Conduct Regulations. However, I am of the opinion that in view of the detailed enquiry made by the Anti Corruption Bureau Authorities, who after conducting enquiry dropped the proceedings on the ground that the petitioner has not acquired any disproportionate assets through his unknown sources of income and there is no allegation of having disproportionate assets by the petitioner. The said charges were also not grave or serious in nature and therefore, the punishment of compulsory retirement awarded on the petitioner shocks the conscience of the Court. This Court in the case of ***PRAKASH CHARY K.G. v. HIGH COURT OF ANDHRA PRADESH REP. BY ITS REGISTRAR***

(MANAGEMENT), HYDERABAD AND OTEHRS *and the Apex Court in the case of* ***B.C. CHATURVEDI v. UNION OF INDIA AND OTHERS, DEV SINGH v. PUNJAB TOURISM DEVELOPMENT CORPORATION LTD. AND ANOTHER, SRI BHAGWAN LAL ARYA v. COMMISSIONER OF POLICE, DELHI AND OTHERS AND PRITAM SINGH v. UNION OF INDIA AND OTHERS*** modified the gravity of punishment awarded wherever the punishment was considered to be excessive and shocks the conscience of the Court. The Supreme Court in the case of **STATE OF U.P. AND ANOTHER v. BIHARI LAL** held that the delinquent was about to reach superannuation within nine months and therefore, no useful purpose would be served in allowing the appeal of the State filed against the judgment of a High Court wherein the High Court interfered with the awarding of punishment of compulsory retirement and directing to reinstate into service of the delinquent.

20. In view of the aforesaid judgment of this Court and the judgment of the Apex Court, I am of the opinion that the charges levelled against the petitioner for the alleged violation of regulation and the alleged pilferage of energy by the petitioner were not proved beyond all reasonable doubt. But, however, the said allegations are not grave or proportionate to award the punishment of compulsory retirement. As the petitioner was already made to retirement compulsorily, I am of the opinion that the just and proper punishment to be awarded on the petitioner is withholding of two increments with cumulative effect.

21. Accordingly, the Writ Petition is allowed. The order of the Disciplinary Authority as confirmed by the Appellate Authority awarding the punishment of compulsory retirement awarded on the petitioner is set aside and the petitioner is deemed to have been reinstated into service with the punishment of awarding postponement of two increments with cumulative effect. The petitioner is entitled to all retirement benefits after taking into consideration the postponement of two increments with cumulative effect. There shall be no order as to costs.

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V. ESWARAIAH, J

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Devinder Gupta, the Chief Justice on this the Twenty Eighth day of October, Two Thousand and Four.

ASSISTANT REGISRAR

To

1. The Chairman-Managing Director, A.P.Transco
   Vidyut Soudha Somajiguda, Hyderabad.
2. The Chief Engineer, Electricity A.P.Transco
   Nizamabad Zone Nizamabad.
3. The Superintendent Engineer (Operation Circle) A.P.Transco
   Adilabad
4. The Divisional Engineer Electrical (O & C), A.P.Transco
   Mancherial,Adilabad Dist.
5. The Asst.Accounts Officer,Electrical Revenue Offcier A.P.Transco
   Mancherial Adilabad Dist.

6. 2 CCs to SC for AP Transco, High Court Building, Hyderabad

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7. 2 CD copies.

Dated:28-10-2004,

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